

## SHARK

### Addressing

**From**

Gregory Peck/DC/USEPA/US

**To**DavidW Smith/R9/USEPA/US@EPA  
DavidW Smith/R9/USEPA/US,**CC**

Jessica Kao/R9/USEPA/US@EPA

**BCC**

### Description

Form Used: Reply

**Subject**

Re: Fw: TNW Decision on Santa Cruz River

**Date/Time**

08/01/2008 03:31 PM

**Contributor**

Gregory Peck

**# of Attachments**

1

**Total Bytes**

325,971

### Processing

Selected Category

Ex. 5 -- Deliberative Process Privilege

SET =

### Body

#### Document Body

Thanks - this is helpful. Ben also talked with Wayne. The ASA(CW) was briefed this morning buy his program and legal staff. Things are moving quickly.

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Chief of Staff  
Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

202-564-5778  
DavidW Smith/R9/USEPA/US

**DavidW Smith/R9/USEPA/US**

08/01/2008 03:19 PM

To Gregory Peck/DC/USEPA/US@EPA

cc

Subject Fw: TNW Decision on Santa Cruz River

FYI

----- Forwarded by DavidW Smith/R9/USEPA/US on 08/01/2008 12:19 PM -----

**Jessica Kao/R9/USEPA/US**

08/01/2008 11:35 AM

To David Evans/DC/USEPA/US@EPA

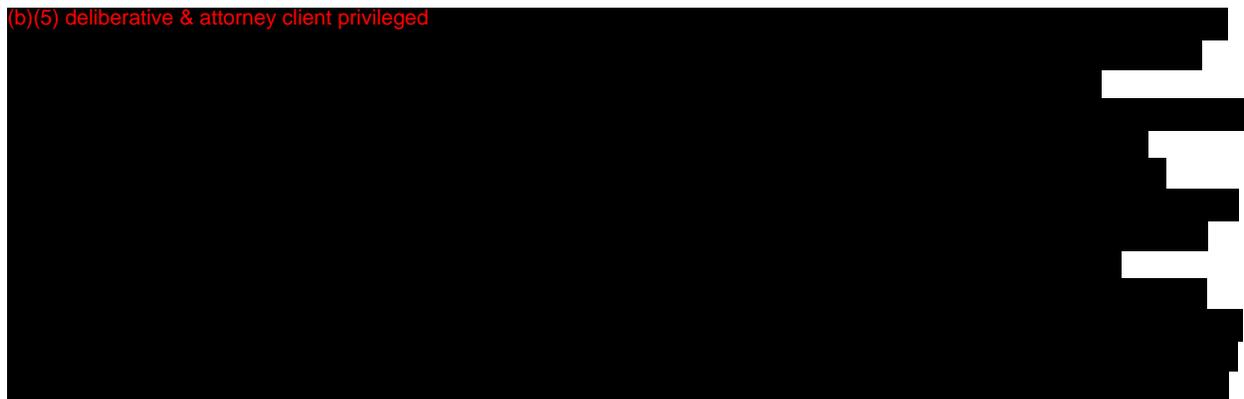
cc DavidW Smith/R9/USEPA/US@EPA, Nancy  
Marvel/R9/USEPA/US@EPA, Alexis  
Strauss/R9/USEPA/US@EPA, Jim  
Hanlon/DC/USEPA/US@EPA, Linda  
Boornazian/DC/USEPA/US@EPA, Mark  
Pollins/DC/USEPA/US@EPA, Wayne  
Nastri/R9/USEPA/US@EPA

Subject Re: Fw: TNW Decision on Santa Cruz River 

Dave,

I'd like to add one quick observation about Arizona. Most of the major watersheds where population and industry concentrate drain to the Gila River, which practically bisects AZ before eventually entering the Colorado at the AZ/CA border. At the risk of being redundant, I have attached a simple map I have used for various briefings on AZ waters over the past few years to illustrate the point.

(b)(5) deliberative & attorney client privileged



Arizona Gila River Basin.pdf

Jessica Kao  
Assistant Regional Counsel  
Water Practice Group  
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DavidW Smith/R9/USEPA/US

**DavidW Smith/R9/USEPA/US**

08/01/2008 08:25 AM

To David Evans/DC/USEPA/US@EPA

cc Jim Hanlon/DC/USEPA/US@EPA, Linda  
Boornazian/DC/USEPA/US@EPA, Mark  
Pollins/DC/USEPA/US@EPA, Wayne

Nastri/R9/USEPA/US@EPA, Alexis  
Strauss/R9/USEPA/US@EPA, Jessica  
Kao/R9/USEPA/US@EPA  
Subject Re: Fw: TNW Decision on Santa Cruz River 📎

Dave, thanks very much for your message. I might add a couple of important points. First, with respect to the idea that Santa Cruz River and perhaps other relatively permanent waters might be deemed jurisdictional based on this Scalia test, I would remind everyone that the Ninth Circuit has essentially ruled that the Kennedy test, not the Scalia test, is controlling. (b)(5) - deliberative

[REDACTED]

We greatly appreciate any help you can provide to help sustain the Los Angeles Corps District determination on Santa Cruz and protect this and other important Western rivers..

David Smith  
Chief  
Wetlands Regulatory Office (WTR-8)  
EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415)-972-3464  
David Evans/DC/USEPA/US

**David Evans/DC/USEPA/US**

08/01/2008 05:38 AM

To Jim Hanlon/DC/USEPA/US@EPA, Linda Boornazian/DC/USEPA/US@EPA, Mark Pollins/DC/USEPA/US@EPA, DavidW Smith/R9/USEPA/US@EPA

cc

Subject Fw: TNW Decision on Santa Cruz River

Wanted to informally provide you a copy of the note I sent to Suzanne (in today, Craig is not) and Craig on a very important, time-sensitive decision regarding the Traditionally navigable water designation of the Santa Cruz River in southern California.

For OWM, see the second "bullet" point on Section 402 implications. For Water Enforcement, see the first bullet on the Johnson case.

Happy to discuss as you wish.

Dave

David Evans, Director  
Wetlands Division  
Office of Wetlands, Oceans and Watersheds

(202) 566-0535

----- Forwarded by David Evans/DC/USEPA/US on 08/01/2008 08:35 AM -----

David Evans/DC/USEPA/US

08/01/2008 08:33 AM

To Suzanne Schwartz/DC/USEPA/US, Craig  
Hooks/DC/USEPA/US

cc Gregory Peck/DC/USEPA/US@EPA, Robert  
Wood/DC/USEPA/US@EPA, Brian  
Frazer/DC/USEPA/US@EPA, Donna  
Downing/DC/USEPA/US@EPA

Subject TNW Decision on Santa Cruz River

DELIBERATIVE PROCESS; CONFIDENTIAL

Suzanne and Craig (copy to Greg, given urgency),

I want to offer some additional thoughts in followup to yesterday's brief discussion on the TNW v. RPW designation of the Santa Cruz River in southern Arizona. As you know, the CWA jurisdictional status of many Western water resources have been very uncertain the past two years following the Rapanos decision, because the majority of streams are non-perennial, and many (along with their adjacent wetlands) are only jurisdictional under the "significant nexus" standard. As that standard must be met in relation to the nearest TNW, the designation of rivers as TNWs (or not) has huge implications for the continued jurisdictional reach of the CWA.

[REDACTED]

[REDACTED]

[REDACTED]

(b)(5) - deliberative  
[REDACTED]

(b)(5) - deliberative

(b)(5) - deliberative

[Redacted]

[Redacted]

[Redacted]

I'm here all day and anxious to discuss this, knowing that Army will likely contact OW soon following their 10am briefing with ASA Woodley.

Thank you for your additional consideration of this Nationally-significant decision.

Dave  
David Evans, Director  
Wetlands Division  
Office of Wetlands, Oceans and Watersheds  
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